91-2055 (2)

Supreme Court, U.S.
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APPENDIX A

STATE OF MICHIGAN
COURT OF APPEALS

May 30, 1991

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v. Nos. 119494;121015

DOUGLAS DWIGHT BENNETT,
Defendant-Appellant.

Before: Walhls, P.J., and Hood and Cavanagh, JJ.

PER CURIAM.

On June 28, 1989, following a jury trial, defendant was found guilty of violating the building contract fund act, MCL 570.151 et seq., MSA 26.331 et seq., and of acting as a building contractor without a license, MCL 339.601; MSA 18.425(601). On July 27, 1989, defendant was sentenced to pay a $100 fine, $1,000 in costs, and $8,671 in restitution by noon on

august 3, 1989, or to spend six months in jail for violating the building contract fund act. For acting as a building contractor without a license, defendant was ordered to pay a $100 fine and $100 in costs by noon on August 3, 1989, or to spend 30 days in jail.

In appeal number 119494, defendant raises a constitutional attack on the building contract fund act, contends that the prosecutor erred in charging him under MCL 339.601;MSA 18.425(601), and that the trial court erred in admitting certain exhibits, in denying his motion for directed verdict of acquittal, in instructing the jury, and in imposing a cruel and harsh sentence. In appeal number 12015, defendant claims that the prosecutor improperly had him jailed when he failed to comply with the judgement of sentence and was guilty of extortion. In addition, defendant contends that the trial court

improperly imposed restitution and lacked jurisdiction to enforce the judgement of sentence because of his pending appeal. We find no merit in any of these arguments.

In appeal number 119494, defendant claims that the statute under which he was convicted, the building contract fund act, is unconstitutional because it is so vague he could not determine its meaning. We disagree.

MCL 570.151; MSA 26.331 provides:

> In the building construction industry, the building contract fund paid by any person to a contractor . . . shall be considered by this at to be a trust fund, for the benefit of the person making the payment, contracts, laborers, subcontractors or materialmen, and the contractor or subcontractor shall be considered the trustee of all funds so paid to him for building construction purposes.

Under MCL 570.152; MSA 26.332:

> Any contractor or subcontractor engaged in the building construction business, who, with intent to defraud, shall retain or use the proceeds or any part therefor, of any payment made to him, for any other purpose than to first pay laborers, subcontractors and

> materialmen . . . shall be guilty of a felony in appropriating such funds to his own use . . . and may be prosecuted upon the complaint of any person so defrauded, and, upon conviction, shall be punished by a fine of not less than 100 dollars or more than 5,000 dollars and/or not less than 6 months nor more than 3 years imprisonment in a state prison at the discretion of the court.
>
> Under MCL 570.153; MSA 26.333:
>
> The appropriation by a contractor, or any moneys paid to him for building operations before the payment by him of all moneys due or so to become due laborers, subcontractors, materialmen or others entitled to payment, shall be evidence of intent to defraud.

After reviewing these provisions, it is apparent to us that the act requires that monies received for a construction project be expended for that project and that any moneies paid to a contractor be held in trust for that purpose. Clearly, use of the money for purposes not mentioned in the act would expose the contractor to a criminal penalty. We easily can agree that the act is not vague. See People v Miller, 78 Mich App 336, 344-345; 259 NW2d 877 (1977).

In the next issue, defendant claims that the prosecutor improperly charged him of being an unlicensed building contractor because all he did was prepare the complainant's home for the laying of cement and he had no intention of doing the building alternations himself. Consequently, defendant maintains that there was insufficient evidence on which to find him guilty or being an unlicensed contractor.

MCL 339.601; MSA 18.425(601) provides:

> (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possess a license or certification of registration issued by the department of the occupation.
>
> * * *
>
> (3) A person, school, or institution which violates subsection (1) . . . is guilty of a misdemeanor, punishable by a fine of not more than $500.00, or imprisonment for not more than 90 days, or both.

Under MCL 339.2401(b);MSA 18.425(2401)(b):

> "Residential maintenance and alteration contractor" means a person who, for a fixed sum . . . undertakes with

> another for the . . . laying of concrete on residential property . . .

In this case, the prosecutor submitted proof that defendant agreed with the complainant to do some alterations to the complainant's residence and that defendant had removed some bricks off the garage wall, broke up the cement, and started the footings with the intent to lay concrete on complainant's property. Therefore, in light of the statutory definition of a residential maintenance and alteration contractor, the evidence was sufficient to show that defendant had engaged in or attempted to engage in an occupation for which a license was needed.

We also find no error in defendant's next claim which concerns the trial court's decision to admit, over defendant's objections, exhibits and similar acts evidence offered by the prosecution. As to

the exhibits, we find no abuse of discretion in the trial court's decision to admit this evidence. See People v Watkins, 176 Mich App 428, 430; 440 NW2d 36 (1989). Nor do we find any error of constitutional proportion. As to the introduction of the similar acts evidence, because intent to defraud is an element that must be proved by the prosecution, the trial court properly allowed the similar acts evidence. Se People v bates, 91 Mich App 506, 510-511; 283 NW2d 785 (1979).

We also reject defendant's argument that the trial court erred in denying his motion for directed verdict of acquittal because he claims he never represented himself as a licensed builder, never agreed to obtain a building permit, never acted as a general contractor, and never refused to return the unused portion of the complainant's down payment. A rational trier of fact could have found that defendant, while engaged in the building

construction business, retained, with the intent to defraud, part of the payment made to him for a purpose other than the payment of laborers, subcontractors and material men. People v Hampton, 407 Mich 354, 368; 285 NW2d 284 (1979).

As to defendant's claim of instructional error, we believe that the instructions to the jury fairly presented the issues to be tried and sufficiently protected the defendant's rights. People v Watkins, 178 Mich App 439, 450; 444 NW2d 201 (1989).

Finally, we find nothing harsh or unusual about the sentence that were imposed in this case.

With respect to the issues defendant raised in case number 121015, we find them so totally without merit that they do not warrant discussion.

Affirmed.

APPENDIX B

ORDER
Entered: January 31, 1992

92024 [Docked July 23, 1991]

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS DWIGHT BENNETT

SC: 92034
COA: 119494, 121015
LC: 86-75808-FH

Defendant-Appellant.

On order of the Court, the delayed application for leave to appeal is considered, and it id DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No.

A-774

DOUGLAS DWIGHT BENNETT,

Petitioner

v.

MICHIGAN

O R D E R

UPON CONSIDERATION of the application of the petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including May 30, 1992.

Volume I

The arraignment of the Defendant, Douglas Dwight Bennett, District Court No.: 86-04-14736FY, proceeding before the Honorable Margaret G. Schaeffer, District Judge for the 47th District Court on May 29, 1986, Pages 1-5

Page 4

Line 11: [DET. MCKENZIE]: I also had a phone conversation on May

Line 12: 8, 1986 with an individual identifying himself as Douglas

Line 13: Dwight Bennett, the Defendant in this incident, that phone

Line 14: call was approximately 1:25; I asked him to voluntarily

Page 4 continued

Line 15: surrender himself to me, which he stated he would not and

Line 16: stated words to the effect --whatever location we could

Line 17: find him.

Line 18: **THE COURT**: So you did go out and arrest

Line 19: him?

Line 20: **DET. MCKENZIE:** Walled Lake Police

Line 21: Department arrested him for me, Your Honor.

Line 22: **THE COURT**: Mr. Bennett, anything to say

Line 23: on the matter of bond?

Line 24: **MR. BENNETT**: Yes, Your Honor. The

Line 25: reason why I could not voluntarily submit to the action

Line 1: [Bennett]: which was taking place, I would lose my jurisdictional

Line 2: action which I may assert and would also like to state,

Line 3: like the detective has stated, this is the first criminal

Line 4: offense felony. . .

Volume II

Page 1

Line 21: **THE COURT**: You will have to have an

Line 22: attorney here on this matter. You indicated apparently

Line 23: you were going to retain your own attorney?

Line 24: **MR. BENNETT**: I wish to stand at this

Line 25: point in time in the Court, Your Honor, in Personam at

Page 2

Line 1: [Mr. Bennett]: law under common laws exercising my full constitutional

Line 2: rights at this time.

Line 3: **THE COURT:** You want to represent your-

Line 4: self?

Line 5: **MR. BENNETT:** Correct, Your Honor

Line 6: **THE COURT:** Mr. Hedges --

Line 7: **MR. BENNETT:** I --

Line 8: **THE COURT:** Just a minute.

Line 9: **MR. HEDGES:** Your Honor, the People would

Line 10: prefer to have an attorney because of the nature of the

Line 11: charges and the seriousness of the charges.

Line 12: (¶) I tried to conduct a meaningful Pre-Exam

Line 13: Conference with Mr. Bennett. He is saying things to me

Line 14: like he is going to remove the case to the Circuit Court

Line 15: [Mr. Hedges]: or Federal Court and join it with other cases and clearly

Line 16: I don't think he understands the nature of the criminal

Line 17: proceeding. I think he definitely needs to be repre-

Line 18: sented by a lawyer.

Line 19: **THE COURT:** You think he understands

Line 20: the nature of the proceedings or think he should be

Line 21: referred for a forensic exam?

Line 22: **MR BENNETT:** Your Honor --

Line 23: **THE COURT:** Just a minute. I am talking

Line 24: to Mr. Hedges right now.

Line 25: **MR. BENNETT:** Sorry, Your Honor.

Line 1: **MR. HEDGES:** Can't comment on the foren-

Line 2: sic part, Your Honor. I don't know if it is just con- . . .

BY MR. HEDGES:

Q. Mr. Faulkner, how much work did Mr. Bennett do on the project?

A. He removed the cement blocks off the side of the house. He removed the patio -- large patio cement area -- broke it up and removed that and stared the footings, and did the front door, and took down the garage door opener.

Q. Did you take any photographs of the condition of your . . .

BY MR. HEDGES:

Q. Mr. Faulkner, did Mr. Bennett explain to you how he was going to do all this work?

A. He explained some of it would be -- much of it would be done by himself and he would sub-contract other jobs.

Q. Now, did you -- between the time the contract -- the bid was accepted and you had the contract and the time when Mr. Bennett was finally done working, did you have any conversation with him?

A. Many times.

Q. And who started those conversations -- who called whom?

A. I suppose it was myself wondering what was the hold-up,

why haven't we seen him? He might be there an hour and disappear and wouldn't see him for three or four days and we had to call him at his home and find out what was happening.

Q. Do you remember how many times you contacted him about working on your premises?

A. I now I should have kept a record, but I didn't. It was so many times -- finally we sent him a certified letter about the condition of the work that he was doing.

MR. PARTRICH: Your Honor, I would object to the vagueness of the answer in terms of the number of times.

THE COURT: Objection overruled. I think your objection again goes to the weight and not admissibility.

BY MR. HEDGES:

Q. At some point did Mr. Bennett ever give you any additional documents?

A. I don't recall.

Q. Did you have further discussions with him?

A. Oh, I'm sorry, yes, yes. After the certified letter and then we met again at his home and I said I would like -- if you can't continue the work I wold like to have my money back, and then he would say well, he said he would make out a bill for what he had already done and to come

to an agreement at that time for a refund.

Q. I am showing the witness what has been marked People's Proposed Exhibit 7, Mr. Faulkner, do you recognize what that is?

A. Yes.

Q. What is that?

A. That his is [is his] estimate of what work he had already done.

Q. And whom did you receive that form [from]?

A. Mr. Bennett.

Q. Did you receive that from him in person?

A. Yes.

Q. Do you recall when?

A. I think it was in January.

Q. Of what year?

A. Eighty Five.

Q. Let me show you what has been marked People's Proposed Exhibit 8, do you recognize what that is?

A. It is like an ultimatum letter that we drew up when he was at our home saying -- and he agreed that he would complete the job in three weeks, January 29 of '85 to avoid cancelling the agreement and refund of the deposit.

MR. PARTRICH: Objection, rather than testifying from knowledge he is reading the document.

PAGE 18 continued

THE COURT: He may testify what he recalls the agreement was. Suppose you should not be

PAGE 19

reading it. You can state what you understand he agreed to, but don't read it from the document at this point.

PAGE 20

A. Well, being a customer and a friend I knew he has done different building jobs and figured he would do a pretty good job for us.

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[The Court]:. . . false pretenses. If that is not, I don't see how this can be. So I will

[The Court]: dismiss that one.

With regard to the charge of fraudulent detention or use of building contract trust fund, the problem is more difficult. The only case in point has been mentioned by Counsel is People vs. Miller, 78 Mich App 336. It is the only case that seems to deal with that particular statute and interpretation of it.

After reviewing that case carefully, I am satisfied that the fact evidence in this case establishes that the crime charged of fraudulent detention or use of building contract trust fund was committed and probable cause to believe it was committed by Douglas Dwight Bennett. In this instance the evidence is that Mr. Bennett receives some $8,000 from Mr. and Mrs. Faulkner to build an addition on the home; that he did some work and did not complete

PAGE 32 continued

[The Court]: it; that the contract itself was entered into September 17 of 1984; that toward the end of 1985 work had not been completed and there had been numerous calls to him about the completion of it; that he talked to the Faulkner's about the money and what was due and owing and what was done, and eventually agreed that he would refund to them -- to the Faulkner's at least $4,000.00 -- that that much that amount at any rate had not been spent on the repairs and remodeling -- that was agreed to. The statute requires

PAGE 33

states in part:

"Any contractor or sub-contractor engaged in the building construction business, who, with intent to defraud, shall retain or use the proceeds or any

[The Court]: part therefore, of any payment made to him, for any other purpose than to first pay laborers, subcontractors and materialmen, engaged by him to perform labor or furnish material for the specific improvement, shall be guilty of a felony in appropriating such funds to his own use..."

and they -- the argument of Defense Counsel is there is no proof that he appropriated these funds to his own use. However, I think the reasonable inferences are that he did appropriate the funds to his own use. He originally agreed to do the project in September of '84 and as of december of '85 it had not been completed. He had made or given no explanation for not doing it. Eventually he agreed that at lease [least] $4,000 he would refund to the Faulkner's. I think the reasonable inference is that he used at least that amount for his own use.

PAGE 33 continued

[The Court]: And People -vs- Miller dealth [dealt] with a similar situation, albeit in that case the Court felt that the bank records indicated clearly that the Defendant had used funds given [to] him by the person with whom he contracted. But it seems to me here that likewise the inference can be drawn that this Defendant used for his own use and not to

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pay contractors or materialmen or laborers for work on this job when he acknowledges at least $4,000 he had that he had not used on the job. And the Miller case seems to me dealt with that theory and discussed the state in detail and said -- on page 341:

"The more important question centers on defendant's interpretation that there can be no violation of the at where no

[The Court]: materialmen or laborers are 'unpaid'. Essentially defendant's interpretation would allow a contractor to do anything he wished with a customer's money so long as the contractor was not legally obligated to pay any laborers, subcontractors or materialmen. Such an interpretation would undermine both the purpose and express language of the statute."

on page 343 in that same opinion the Court of Appeals noted:

"Because the building contract fund act is a remedial statute, designed to protect people of the state from fraud in the construction industry, we construe it liberally for the advancement of the remedy. People v Bundy, 35 Mich App 53, 57; 192 NW2d 115 (1971). In light of the statutory purpose and the statutory language referring to future obligations of the contractor, we hold . . .

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. . . guess you could say you work out of your home.

Q. [Mr. Saunders] Is there an office that you go to to do calls?

A. [Mr. Faulkner] There is a central office, yes, in --

Q. You do some work out of your home as well?

A. Yes.

Q. Spend more time at home or at the office?

A. In the field.

Q. You said that's how you first met Douglas Dwight Bennett?

A. Yes.

Q. Do you remember what year you first came to contact with him?

A. Well, '80 or '81.

Q. Now, I would like to direct your attention to the fall of 1984, and ask you

were you interested in making some changes to your house at that time?

A. Yes.

Q. Tell the jury what you were interested in doing at that time?

A. We needed to make a bedroom on the first floor for our wheelchair daughter that was 13 at the time in a wheelchair, and being that the second floor with the chair lifts. And then we also needed a business office and a deck for outside the family room, plus a whirlpool bath for the adopted daughter.

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Q. Now, I'd like to direct your attentions specifically to the month of September of 1984. Now, in that month did you go about trying to get a contract for that work?

A. Yes, I did.

Q. Explain to the jury how that procedure went for you? What exactly did you do to get this job done?

MR. BENNETT: I object to that, Your Honor, the issue of the contract.

THE COURT: Do you want to stand and state the legal basis of your objection?

MR. BENNETT: Yes. The objection to the contract that the prosecution is now involved with was entered into a civil matter. This is a criminal matter.

THE COURT: What's wrong with the question he asked? That's what you're objecting to?

MR. BENNETT: The questioning he is about to bring forth is that it violates my Fourth, Fifth and Fourteenth Amendment rights to the Constitution of the United States, that it was a civil action with this contract. This is criminal. The Court -- the People brought the charges against the Defendant bases primarily on a case --

Page 58 continued

THE COURT: But what is the legal basis for your objection?

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A. [Mr. Faulkner] When he gave me the quotation on the job.

Q. [Mr. Saunders] The thing you have in your hand?

A. Yes.

Q. Does that document there set forth that $8,000 down payment?

A. Yes, it does.

Q. Did Mr. Bennett tell you why he needed $8,000 as a down payment?

A. Yes, to start buying the materials.

Q. What exactly did he tell you that you recall?

A. I don't recall exactly what he -- it was just that he needed the down payment to start the job which is a normal thing to do.

Q. Were you able to give him the money?

A. Yes.

MR SAUNDERS: Your Honor, the Record should reflect I am showing the Defendant what's been marked as People's Proposed Exhibit No. 2 and 3.

MR. BENNETT: It just barely shows that a check was issued to --

THE COURT: He's just showing it to you.

MR. BENNETT: Yes.

MR. SAUNDERS: May I approach the

witness, Your Honor?

THE COURT: Yes.

Q. **(CONTINUING BY MR. SAUNDERS)** Now, Mr. Faulkner, I'm handing you what's been marked as People's Exhibits -- Proposed Exhibits No. 2 and 3, and I ask you if you recognize those?

A. Yes

Q. How do you recognize those?

A. The checks I made out.

Q. How do you know you made them out?

A. Because I signed them.

Q. Okay. And is that your writing on them?

A. Yes, it is.

Q. Who did you make those checks out to?

A. Doug Bennett.

Q. And what was the reason you made out those particular checks?

A. As a down payment for -- deposit for the job to be completed.

MR. SAUNDERS: Your Honor, I would move for admission of both People's Proposed Exhibits 2 and 3.

MR. BENNETT: I object at this time, Your Honor. It is also in violation of my Fourth, Fifth and Fourteenth [Amendments]. It's more civil than criminal. This is a . . .

A. [Mr. Faulkner]: we became very concerned that we might be taken in a fraud.

Q. [Mr. Saunders]: and what did you do in response?

A. On December 7, 1984, we gave a certified letter and sent it to Mr. Bennett.

MR. SAUNDERS: Your Honor, the Record should reflect I'm showing what's been marked as People's Proposed Exhibit No. 5 to the Defendant.

May I approach the witness, Your Honor?

THE COURT: Yes.

Q. (CONTINUING BY MR. SAUNDERS) Mr. Faulkner, I'm handing you what's been marked as People's Proposed Exhibit No. 5, and I ask you if you recognize that?

A. Yes, I do.

Q. Tell the jury what that is?

A. Pardon me?

Q. Tell the jury what that is that I gave you?

A. This is a certified letter to Mr. Douglas Bennett in response to the construction work.

Q. Okay, I'm sorry, I didn't hear you. Did you say from Mr. Bennett to Mr. Bennett.

A. To Mr. Bennett.

Q. Who wrote that letter?

A. I did.

Q. How do you know that's the one you wrote?

A. Well, I wrote the letter and my daughter typed it.

Q. Did you sign it?

A. Yes, I did.

Q. Is that your signature on there?

A. Yes, it is.

MR SAUNDERS: Your Honor, I wold move for admission of People Proposed Exhibit No. 5 under 901.

MR. BENNETT: Object to that being entered, Your Honor, there's no foundation to suggest that I received the letter. The signature on it is my wife's.

THE COURT: Overruled. The Court will receive it as evidence.

Q. (CONTINUED BY MR. SAUNDERS) Mr. Faulkner, what's the date of that letter, please?

A. December 7th of '84.

Q. And you said your daughter typed it?

A. Yes.

Q. Who composed it?

A. I did.

Q. What does it say briefly without reading it? What exactly were you conveying in that letter?

A. That we were disappoint in the quality -- or the quantity of the amount of work that he was doing. And . . .

MR BENNETT: Your Honor, I only have one objection to it, in that that it should state on the agreement --

THE COURT: He's only showing it to you at this time.

MR. BENNETT: Yes, but I have the objection to it.

THE COURT: Well, he hasn't done anything with it except give you the courtesy of seeing what he's gong to now use.

MR. BENNETT: Could you read in full length in text?

MR. SAUNDERS: May I approach the witness, Your Honor?

THE COURT: Yes.

Q. (CONTINUING BY MR. SAUNDERS) Mr. Faulkner, I hand you what's been marked as People's Proposed Exhibit No. 6 and I ask you if you recognize that?

A. What's your question?

Q. Do you recognize that?

A. Yes.

Q. Tell the jury what that is, please?

A. That's a statement to complete the job or to return the money.

Q. Is that the statement that you were just telling me

about that you made up when he came over to your house?

A. Yes.

MR. BENNETT: I object, Your Honor, it leaves a false impression as to the money. He should state fully that it says the part of the money that was not used.

THE COURT: Continue.

Q. (CONTINUING BY MR. SAUNDES) At this time, let me ask you this. Who wrote out that?

A. I did.

Q. And who signed it?

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A. Douglas Bennett; witness, Ryan Faulkner.

Q. Did anyone else beside Ryan Faulkner witness that?

A. Not my handwriting -- my wife was in the room.

Q. Were you in the room?

A. Yes.

Q. Did you see him sign it?

A. No, I did not sign it.

Q. No, I'm sorry, did you see him sign it?

A. Yes, I did.

Q. Did you see him sign it?

A. January 8th, '85.

Q. You saw him sign that?

A. Yes.

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... of part of the deposit monies paid 10/4 of '84. Signed Douglas Bennett 1/8 of '85.

Q. [Mr. Saunders] I'm sorry, what's the date on that?

A. 1/8 of '85.

Q. And it says that he will have it completed within three weeks?

A. That's correct.

Q. Did he complete it within three weeks.

A. No.

Q. Did he do any work after that letter, if you remember?

A. I believe, yes.

Q. What do you remember him doing?

A. Subcontractor to dig out a large hole where the patio was.

Q. And did they do that after that letter?

A. They did that before the letter.

Q. Did he do anything -- don't worry.

A. Okay.

Q. You just tell as much as you can remember, okay?

Page 87 continued.

A. Yes.

Q. Now, my question is --

A. It was before the letter, a week before the letter.

Q. AFter that letter, do you remember him doing anything more?

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Q. [Mr. Saunders] Did he give you that letter?

A. Yes.

Q. Did he make any statements about what that letter contained? Without reading it at this point, did he tell you why he was giving you that?

A. I don't understand the question.

Q. Did he tell you why he was giving you that letter at all?

A. Yes.

Q. Why did he say he was giving it to you?

A. He was telling us of his cost and subcost of what was done so far.

MR. SAUNDERS: Your Honor, I would move for admission of People's Proposed Exhibit 7, under 801D2.

MR. BENNETT: I have no objectins other than what I've stated.

THE COURT: Received.

Q. (CONTINUING BY MR. SAUNDERS): Mr. Faulkner, would you explain to the jury the specifics of what that has on it? Tell them what is says there?

A. Various prices of purchases and subcontractors who have worked on it.

Q. Does it list the prices of the things done?

A. Yes.

Q. Does it have a total of the amount spend?

[Bennett] addition within the Defendant's home, correct? That's what you stated to the Court?

A. [Mr. Faulkner] Would you repeat that, please?

Q. You contacted the Defendant at his home in regards to having this addition built; is that correct?

A. Yes.

MR. SAUNDERS: Your Honor, I'm sorry, just for simplicity, I have no problem. If he wants -- he doesn't have to say the Defendant, if he wants to say me to make it easier for all [of] us to understand. I have no problem with that.

MR. BENNETT: Okay, fine, would I be all right or something other than the Defendant?

THE COURT: Ask you questions.

Q. (CONTINUED BY MR. BENNETT) Mr. Faulkner, how long have you known Mr. Bennett, the Defendant?

A. Since 1980 or '81.

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Q. So you could say that we had a casual relationship rather than business, couldn't that be assumed?

A. Yes.

Q. And I know you as an individual.

THE COURT: Well, you're asking him questions, not giving testimony yourself.

MR. BENNETT: Yes, well, that's what I'm leading up to, Your Honor.

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Q. (CONTINUED BY MR. BENNETT) Yes or no?

A. [Mr. Faulkner] I believe you do more than that.

Q. And how is that in regards to what type --

A. For the type of blueprints that I saw in your home were not just cement contracting.

Q. Couldn't they be mistakenly identified as subdivisions for homes located in subdivisions?

A. I didn't understand your question.

Q. Couldn't those prints be subdivisions of homes where I have to bid on the cement work for curbing?

A. I don't know.

Q. So it could be a misconception on your part?

THE COURT: He said he didn't know.

Q. (CONTINUING BY MR. BENNETT) When you gave the Defendant this money, did you advise the Defendant that this money has to go in a separate fund?

A. No.

Q. Did you know of this building trust fund when you gave the Defendant his money?

A. No.

Q. Then how can you, Mr. Faulkner, say if I was not advised of it, what I should do with this money?

MR. SAUNDERS: Your Honor, I object. Mr. Faulkner doesn't have to say anything.

He doesn't have to know anything about this law. The fact of the matter is there's a law and we allege that he broke the law and it was nothing to do with what Mr. Faulkner knew or did not know.

THE COURT: Well, the question is infirm in it [its] form. And he was asking the witness what he knows and then the question is as posed by the Defendant, what the Defendant knows which isn't --

MR. BENNETT: When the issue -- excuse me.

THE COURT: So I sustain the objection to the form of the question.

MR. SAUNDERS: I ask that the subject be changed, Your Honor, move onto some other subject for the reason that I stated as well.

THE COURT: The questions infirm in the way posed, so I have to wait for another question.

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Q. (CONTINUED BY MR. BENNETT) On appeal by Miller, the Court of Appeals --

THE COURT: Well, ask a question. We need a new question, sir.

MR. BENNETT: We need a new question with regards to building --

THE COURT: We need a question.

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THE COURT: Well, when you assume your own defense and you assume it within the rules of the trial out of fairness for the trial scene itself. So ask a question.

Q. (CONTINUING BY MR. BENNETT) Of the work that was performed at your house, are there any liens against your house at this time?

A. [Mr. Faulkner] I didn't get the last part of the question.

Q. The work that was perform by the Defendant were there any liens attached to your property for this work that was performed?

A. I don't know.

Q. Have you been notified of any liens [that have] been filed against your house for nonpayment?

A. No.

Q. The Defendant did do quite extensive work to your property, correct, as far as like you've indicated taking the brick off the house, removing the patio?

A. No.

Q. Digging out the crawl area.

A. No.

Q. And the footings. Did the Defendant do that or --

A. He did not do extensive work, no.

Q. Did the Defendant dig the footings for the addition?

A. Yes.

Q. Did he dig the crawl area for the addition, that three foot area that had to be dug out?

A. Yes.

Q. Did the Defendant have block delivered to that job?

A. Yes.

Q. Did the Defendant have trusses delivered to that job?

A. Yes.

Q. Were you ever advised by any of the companies that Mr. Bennett employed -- subcontractoed that money was still owed?

A. I'm not aware of it.

Q. You also indicated to the Court that you obtained the building permit. Was there anything in the contract you had with the Defendant that indicated that he would obtain the building permit.

A. You mean in the quotation?

Q. Yes.

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A. No.

Q. You stand to gain by the Defendant constructing the addition, correct?

A. I don't understand your question.

Q. In other words, the price I quoted you is much lower than that of a licensed contractor, correct?

A. Not much lower, but some amount lower.

Q. Enough to --

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A. Pardon me?

Q. Enough to be adequate, correct, as far as you're going [to] wind up with a savings on it. You've indicated to the Court that work stopped. Could you tell the Court why and who you were ordered by to have this work stopped?

A. I'm not aware that we were ordered to stop work.

Q. Did not the City of Farmington Hills, by and through the building inspector, John T. Waid, notify you to cease all work due to the fact that --

A. I'm not aware --

Q. --the Defendant, the Sixth Circuit --

A. No.

Q. You're not aware of that?

A. I'm not aware that we were ordered to stop. You're the one who stopped.

Q. Did the building department ever notify you to cease operations?

A. I am not aware of the building department notifying me.

Q. You have an attorney named Samuel Gun, correct?

A. Yes.

Q. There's a Federal lawsuit pending in Federal Court on this issue, correct?

MR. SAUNDERS: I object, Your Honor,

. . . [Mr. Saunders] I don't see how it's relevant.

MR. BENNETT: What I'm getting at is the sixth Circuit Court --

MR. SAUNDERS: Okay, I've got to be able to finish my argument. I don't think it's relevant and I don't think -- it would be speculation. Mr. Faulkner isn't a lawyer that I know of and he should't know, and I don't think he does know what cases are pending in Federal court or in any other Court. So I would object.

Q. (CONTINUING BY MR. BENNETT) And you're not aware of any facts that the building inspector said that no further work to be done on the property and that Mr. Bennett is to be off the property due to the fact he does not have a builder's license. Are you aware of that fact?

A. The way that you state it now, yes.

Q. You are aware of the fact that the City order me off the property because I do not have a builders license?

A. Yes.

Q. Did the Defendant advise you that the work that progressed had to stop at that point per inspection of the footings by the City?

A. I'm aware that you were waiting for some inspections.

Q. ANd that I could not proceed until I got these inspections, correct?

A. I suppose.

Q. And it was the City not allowing me to lay the cement so I could continue with the work.

THE COURT: What's the question?

Q. (CONTINUING BY MR. BENNETT) The question is that; Are you aware of the fact

that I could not proceed any further until I was okayed by the City to proceed?

THE COURT: Aware, then or now?

MR. BENNETT: Then. The addition is already done.

THE WITNESS: I don't understand your question.

Q. Was it required that the footings be inspected before I was allowed to work on it?

A. I don't know.

Q. Were you ever advised of this?

A. I don't think so.

Q. By the City? You're under oath, Mr. Faulkner. I have a brief from the Sixth Circuit that say that --

A. Well, I don't know.

Q. -- John T. Waid notified you personally --

THE COURT: He answered the question.

THE WITNESS: I don't know.

Q. (CONTINUING BY MR. BENNETT) Is that your statement? Yes or no?

A. Yes.

Q. Yes, you were notified or no, you were not notified?

A. My answer to the question is yes, I don't know --

Q. Yes?

A. -- If I was notified.

Q. You don't know if you were notified; is that what you're saying. You don't know? Or yes, you were notified, or no you were not?

THE COURT: This is by the City?

MR. BENNETT: This is by the City. This is the building inspector.

THE COURT: Well, ask the complete question because I think it's getting argumentative.

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Q. (CONTINUING BY MR. BENNETT) Did the building inspector not advise you that Mr. Bennett was not to proceed on the addition because he did not have a builder's license, yes or no? Did the City advise you? You're under oath.

A. Yes.

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Q. So it was then understood that I could not proceed without the City properly inspecting the footings so I could proceed?

A. Because you needed a license.

Q. Well, no, I need the inspection.

THE COURT: Ask him a new question.

Q. (CONTINUING BY MR. BENNETT) I could not proceed because I did not have a license; is that correct?

A. I didn't understand your question.

Q. I'll go onto another question. The State is saying -- well, wait just a second.

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[Mr Bennett continuing] Did the Defendant offer to reimburse you for money not spent?

A. Yes.

Q. Why didn't you accept this offer?

A. You didn't give it to me.

Q. Well, I made an offer and I put the proposal to you, and I stated I was returning --

THE COURT: Well, you're making statements rather than asking questions.

Q. (CONTINUING BY MR. BENNETT) Why do you feel that the Defendant did not pay you this money back?

A. I don't know.

Q. Would you have accepted that money at that time?

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A. I don't know.

Q. Why didn't you take a civil action to recover it?

MR. SAUNDERS: Object, Your Honor, that's irrelevant.

THE COURT: Sustained.

MR. BENNETT: It leaves me in a position, Your Honor, where I'm --

THE COURT: Just ask a question. This is the time for cross-examination, not for argument.

Q. (CONTINUING BY MR. BENNETT) Would you have taken the offer if Mr. Bennett had the money?

THE COURT: He already --that's [that] question has been asked.

MR. BENNETT: And answered. Yes?

THE COURT: And answered. No, the answer was, "I don't know." But the question has been asked and answered. Well, ask a new question.

Q. (CONTINUING BY MR. BENNETT) Could you be more specific, yes or no?

THE COURT: He's already answered the question, "I don't know." That's the answer you got, sir. Ask a new question.

Q. (CONTINUING BY MR. BENNETT) Did you feel that you were entitled to additional money, other than --

were entitled to additional money, other than --

A. Yes.

Q. Why did you not raise those objections to the Defendant?

THE COURT: Well, then, you're asking a question that assumes a fact not in evidence.

MR. BENNETT: Your Honor, I'm in a position where the Defendant is saying one thing, I'm saying another.

THE COURT: Well, you haven't said anything yet, you're just asking questions.

MR. BENNETT: I know. That is the difficulty.

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q. (CONTINUING BY MR. BENNETT) You stated that you're a licensed day-care center.

A. I didn't hear you.

Q. Or a foster care, correct?

A. I did not understand your question.

Q. Are you licensed by the State of Michigan for foster care?

A. Yes.

Q. You have more than just you and your immediate family in the home?

A. I have one what?

Q. You have more than just you and your immediate family . . .

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Q. (CONTINUING BY MR. BENNETT) You were advised at one time by the City of Farmington Hills that Mr. Bennett couldn't proceed on this' is that right, couldn't proceed with the project?

A. I believe so.

Q. Do you remember when that was?

A. No.

Q. Was it before or after he wrote out that statement saying that he was going to pay you back the money?

A. Before.

Q. Besides writing that statement, did he ever give you any -- try to give you money?

A. No.

Q. Would you have accepted back the remaining money had he tried to give it to you?

A. I don't know.

Q. Why don't you know?

A. Because I believe the $4,000 work that he says that he did was very overly priced through research that I've done with other building contractors for their opinion of what the work that he's done that he jacked up the prices.

Q. All right. So let me see, maybe I'm not being clear. When I asked you if you would accept the money he set out there that he owed you, about $4,000,; when you

say you don't know, what do you mean, do you mean that you want more, or you wouldn't take any?

A. I feel that I'm entitled to the full $8,000 that I have him.

MR. SAUNDERS: I have no further questions, Your Honor.

RECROSS - EXAMINATION

BY MR. BENNETT:

Q. Mr. Faulkner, in regards to your statement as to attorneys' fees, could you clarify that for the Court? In regards to the amount of fee that you've had to pay an attorney, could you explain to the Court what that is?

A. I don't understand your question.

Q. You stated due to this action, you've incurred attorneys fees. Could you state for the Court what these fees are and what they are for?

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A. I don't understand.

Q. Are they related to the case now pending or the case in Federal Court?

MR. SAUNDERS: Your Honor, I have to object to any statements about a case or cases in Federal Court. That's not relevant. We're not here for cases in Federal Court. We're here for a crime and we've set forth that in the information. And he continues to bring up . . .

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DIRECT EXAMINATION

BY MR. SAUNDERS

Q. Would you state your full name and spell your last

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name for the Record, please?

A. Samual H. Gun, G-U-N, and my address is 24567 Northwestern Highway, Suite 1C,

Southfield, Michigan.

Q. And what do you do for a living, Mr. Gun?

A. I'm an attorney.

Q. Have you represented the Faulkners, James and Donna before?

A. Yes, I have.

Q. And did you counsel them with regard to a matter concerning Douglas Dwight Bennett?

A. I did.

Q. Would you describe for the jury briefly what your contact was in the whole situation?

A. Well, initially the Faulkners had come to my office just for an initial interview, presented this problem so I was given to understand before I met them regarding a building contract. They made an appointment, came in, told me some of the facts that they thought were important. I

recall that I had to review a number of handwritten notes, which I think the parties had intend as a contract. I honestly -- I Don't recall at this time, but I do recall that I did review everything that they did bring and researched it in terms of the possible alternatives that were available to enforce their

claim.

Q. You sound just like a lawyer.

A. It feels funny sitting in this box.

Q. What -- the Faulkners came to you with the problem?

A. Yes, they did.

Q. Briefly, what was the problem?

A. They had a builder commence a project as of the time they came to me. They were unable to reach him or contact him for follow up or questions or even progress

reports. And then ultimately, we discovered that the builder was unlicensed and that changed some of the alternatives that were available at the time.

Q. Did you ever meet this Mr. Bennett in person?

A. No.

Q. Other than today which you -- I want to put it a different way --

A. I've seen Mr. Bennett before.

Q. In other circumstances, but did you know him at the time at all that you dealt with -- represented the Faulkners/

A. No. At the time that the Faulkners came in for their initial consultation I had never met Mr. Bennett nor had I ever heard of him.

Q. Now, did you attempt to contact Mr. Bennett about the problem?

A. I believe I did. If i'm not mistaken, I probably

sent him a letter. Typically, I wouldn't call any prospective Defendant in any case just out of processional propriety. I generally send a harmless letter by way of introduction and offer him an opportunity to contact my office to further discuss it. Thereafter, if there's a breakdown, I take other actin.

MR. SAUNDERS: The Record should reflect that I'm showing what's been marked as People's Proposed No. 8 to the Defendant.

MR. BENNETT: It was sent to Douglas Bennett.

THE COURT REPORTER: I didn't hear you.

MR. BENNETT: It was sent to Douglas Bennett. I see no acceptance of the letter.

THE COURT: Did you have a chance to review the Exhibit, sir?

MR. BENNETT: Yes, I did.

MR. SAUNDERS: May I approach the

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witness, Your Honor?

THE COURT: Yes.

Q. (CONTINUING BY MR. SAUNDERS) Mr. Gun, I'm handing you what's been marked as People Proposed No. 8, and ask you if you recognize that and look at all the . . .

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A. [Mr. Sovay with National Bank of Detroit] The cashier's check is date October 9, 1984.

Q. [Mr. Saunders] Do your records indicate what was done with the cashier's check?

A. The cashier's check, i really can't testify as to Comerica's records, but it was either cashed or deposited.

Q. But you don't have any indication through your records?

A. No, sir.

MR. SAUNDERS: one moment, Your Honor.

I have no further questions, Your Honor.

MR. BENNETT: I have no questions, except the objection to which I've already stated for the Court, in violation of my Constitutional rights. I wish it be suppressed, the Exhibits as well as the testimony.

THE COURT: Are there any questions by the jury panel for this witness?

(Negative response)

THE COURT: There's a Motion to Suppress. I don't know what it is you want to supress, but in any event --

MR. BENNETT: Suppress the . . .

MR. SAUNDERS: Your Honor, the People would call Audrey Steinhoff to the stand.

A U D R E Y S T E I N H O F F

after having been first duly sworn by the Clerk of the Court at 2:20 p.m., was examined and testified on her oath as follows:

MR. BENNETT: Your Honor, I'll object at this time. The witness that the prosecution is now bringing before the Court is not a party to the action, knows nothing of a first-hand account of the action. Therefore, it puts the Defendant in jeopardy underneath his Sixth Amendment rights to the US Constitution to a fair trial.

MR. SAUNDERS: Your Honor, I cite for the Court Michigan Rule of Evidence 404B,

which allows evidence of other wrongful conduct to be used in a trial to show, among other things, intent. There's an issue here with regard to intent to defraud. I'm calling Ms. Steinhoff to show -- to have testimony with regard to another incident involving Mr. Bennett to prove an intent to defraud under 404B.

MR. BENNETT: Your Honor, I'll further object and state the case of People versus Sadler, where the prosecution, Greg Weir, at that

time, brought a witness of a prior conviction before the Court. The Court of Appeals ruled and g ave the Defendant a new trial.

THE COURT: Objection overruled.

MR. SAUNDERS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SAUNDERS:

Q. Mrs. Steinhoff?

A. Yes.

Q. Can you hear me?

A. Yes, I can.

Q. Would you state your full name and spell your last name for the Record, please?

A. Audrey J. Steinhoff, S-t-e-i-n-h-o-f-f-.

Q. Would you tell the jury where you live, Audrey?

A. I live [at] 3545 Union Lake Road, Walled Lake, Michigan.

Q. Did you live at that address on June 8th, 1984?

A. Yes, I did.

Q. And who did you live with at that time?

A. My husband.

Q. Anyone else?

A. Family.

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Q. And at that time in 1984, did you make an agreement with a Douglas Dwight Bennett to do some work for you?

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THE COURT: Yes, you're not here to make any argument. That's right. Now, if you hired him in the interim, that's your business.

MR. HALL: Well, Judge, it might be quicker then. I don't have any problem with making argument.

THE COURT: Lots of things would have been quicker, but the Defendant has a right to represent himself, just as long as he knows his right to be represented by counsel. He has not made a request for a court-appointed attorney knowing full well that he has a right to a Court-appointed attorney in this matter. And the Court on its own Motion appointed counsel to sit with you to answer any questions you have. So that's where we are.

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MR. BENNETT: No, I'm not --

MR. HALL: But, Judge, if you would, I'm prepared to argue his Motion to Dismiss and, if the Court will permit me, I'll go forward. He just has one witness to call. I'll ask that witness a few questions.

THE COURT: He's representing himself.

MR. BENNETT: I'll waive that.

THE COURT: You can't. You're . . .

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[The Court] . . .issue of the attorney settled. You may want to hire him, but I want to hear from counsel whether or not there is an arrangement, and whether or not he accepts the representation, or whether he is to continue under the Court's Order in the role that he's presently assigned.

MR. HALL: Your Honor --

THE COURT: It's up to you.

MR. HALL: I believe Mr. Bennett should continue to represent himself. That's just

my --

THE COURT: All right. So you don't accept any active representation of him at this time and you're acting as the Court-appointed attorney just to confer with him and counsel him when need?

MR. HALL: Yes, Your Honor.

THE COURT: All right. Let's have your Motion then.

MR. BENNETT: Your Honor, then I may proceed with my Petition for a Directed Verdict for Acquittal at this time?

THE COURT: Go ahead.

MR. BENNETT: Your Honor, at this time, the Defendant Petitions for a Directed Verdict of Acquittal. The first issue is that of the Statute of the Building Trust Fund. It is a

legislative law, and therefore, the Defendant cannot be held liable unless the Defendant was first forewarned of this law.

Under cross-examination by the Defendant, Douglas Bennett, Mr. James Faulkner was asked if he personally warned Mr. Bennett of this law, and how the money of this down payment was to be used. Mr. Faulkner indicated he did not advise Mr. Bennett of the consequences if he failed to respond properly.

The second issue is that -- the second issue that the Defendant will raise, does the building trust fund apply to a person who is not a subcontractor or a general contractor? Prosecution has failed to prove whether the Defendant is a genereal contractor or a subcontractor.

Mr. Faulkner came to the Defendant, Douglas Bennett, asked the Defendant to bid on his proposed addition. There is nothing to signify that the Defendant is a residential builder. On that, the Defendant built several additions to his own home, which he has the right to

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underneath a homeowner's permit and that the Defendant helped his neighbors in their remodeling of their homes which Mr. Faulkner has already testified to.

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[Mr. Bennett] . . . Faulkner's addition. The prices that were charged were fair and just. The prosecution has failed to prove otherwise.

The sixth issue is that of the remaining money that Faulkner gave to the Defendant, Douglas Bennett. Mr. Bennett was more than willing to refund the balance to Mr. Faulkner. Mr. Faulkner refused to do so.

The seventh issue is that of failure -- is that a failure to represent -- failure, that is the seventh issue is that a failure to represent that the Defendant claimed to be a licensed contractor. There is no evidence, circumstantial or otherwise that the prosecution has brought before this Court to state that the Defendant is

an unlicensed builder.

The prosecution has failed to prove that the Defendant derives most of his income form that of being a licensed contractor, which he is not.

The Defendant claims he is a cement contractor. Mr. Faulkner came to Mr. Bennett and asked him as a friend to do this construction to his house. Mr. Bennett agreed to do this. Mr. Bennett advised Mr. Faulkner he was not a licensed

contractor and he would have to take out the necessary permits.

I feel at this point, the prosecution has failed to prove its case, directly or indirectly. That there is no evidence to prove that Mr. Bennett did violate the Building Trust Fund Act for it only applies to contractors and subcontractors. The prosecution has failed to prove otherwise that Mr. Bennett is a licensed contractor. So, therefore, at this time, I wish to move

for a Directed Verdict of Acquittal.

MR. SAUNDERS: Your Honor, I would ask the Court to deny his Motion. Many of his argument I don't think really go toward the Directed Verdict, but may be appropriate in closing argument.

Just briefly, his final -- what hits my mind the most is his final argument that I failed to prove that he was a licensed contractor. I'm not trying to prove that he was a licensed contractor. I'm not trying to prove that he was a licensed contractor. He's charged with not being a licensed contractor. I hope I have been successful in failing to show that he was licensed.

Just briefly, a mistake of law is not a defense, Your Honor. He's bringing up the fact that he didn't know about the crime that is involved here. There's no obligation on the --

THE COURT: Well, this isn't the

point in the proceedings for the defense. It's whether the people have sustained their burden of proof to show a prima facie case in the evidence.

MR. SAUNDERS: Yes, Your Honor, and I believe that we have sustained our burden. We've shown that there was -- we had some evidence to show that there was a contract, and in that contract, he was given funds for the purpose of getting labor and materials to do the project, that he did not first use that deposit to do that, to get materials and labor to finish the contract. We had testimony and an Exhibit to show that he, in fact, admitted that, that he owed money back. And also testimony will show that he never paid the money back.

Also, your Honor, the Exhibits include a contact that was made out for the construction, and based on that I believe that we've established our burden of

showing the prima facie case, and I ask that his Motion be denied.

THE COURT: Motion denied. We're ready for the jury.

MR. SAUNDERS: Could we just see which witnesses Mr. Bennett has in here. There may be one who hasn't --

MR. BENNETT: No, Mr. Shinavard is here.

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MR. SAUNDERS: Okay, so we have --

MR. BENNETT: Both witnesses are here.

THE COURT: Okay, let's go.

MR. SAUNDERS: Thank you, Your Honor.

(Whereupon the jury returned to the courtroom, after which the following proceedings were had.)

THE COURT: All right. Ladies and gentlemen, we're ready to continue. I ask whether or not the Defendant wishes to call any witnesses?

MR. BENNETT: Yes, I do, Your Honor.

THE COURT: All right. Call your witness.

MR. BENNETT: I wish to call my first witness, John T. Waid.

J O H N W A I D

after having been first duly sworn by the Clerk of the Court at 3:35 p.m.., was examined and testified on his oath as follows;

DIRECT EXAMINATION

BY MR. BENNETT:

Q. Could you please state your full name for the Court?

A. John T. Waid. It's W-a-i-d.

Q. And your place of employment?

A. City of Farmington Hills.

Q. How long have you -- what do you do as --what do you do at the City of Farmington Hills?

A. I'm the building official.

Q. how long have you been a building inspector for the City of Farmington Hills?

A. Over fourteen years.

Q. How did you first become acquainted with the defendant, Douglas Bennett, now before the Court?

A. My first acquaintance with Mr. Bennett was when he came into my office three or four weeks ago to copy some papers.

Q. Prior to that then could it have been one of the assistants that works under you, sir?

A. Possibly, yes. I've never met you before.

Q. Have you ever been out to the Faulkner residence?

A. No, I haven't.

Q. Didn't you state in the Sixth Circuit brief that you were?

A. No.

Q. What do you know of the proceedings now before the Court?

A. Not very much.

MR. BENNETT: Your Honor, there must

be a mix up because my --

THE COURT: Well, do you have any other questions for this witness?

MR. BENNETT: No, I'm addressing the court that this witness --

THE COURT: Well, are you through questioning this witness?

MR. BENNETT: Apparently, I've subpoenaed the wrong person.

Q. (CONTINUING BY MR. BENNETT) Could you tell me which associate dealt with Mr. Bennett?

A. Pardon?

Q. Could you tell me which assistant of your dealt with Mr. Bennett?

A. I can't say for sure, but I think Mr. Floyd mean (phonetic) was out there. I can't say for sure, but I that's the gentleman that was on the job. This happened some time ago.

Q. Correct.

MR. BENNETT: Your Honor, there's a problem that I've just become aware of.

MR. SAUNDERS: Well, Your Honor, if he has an argument for the Court, I would ask that it be made outside the presence of the jury.

THE COURT: Do you have any more

questions for this witness?

MR. BENNETT: He is of no value to me at this time, Your Honor.

THE COURT: So the answer is no, you have no further questions.

MR. BENNETT: I have no further questions, but I wish to make an argument before the Court.

THE COURT: Well, then, if you have no further questions, this is the time for the prosecutor to ask his questions.

CROSS-EXAMINATION

BY MR. SAUNDERS

Q. Mr. Waid, have you dealt with Douglas Dwight Bennett before?

A. Only on that one occasion he came into my office to request some copies of some records which was several weeks ago, maybe six weeks ago.

Q. The person who was just questioning you, is that the person who came in?

A. Yes.

MR. SAUNDERS: Your Honor, the Record should reflect an identification of Mr. Bennett.

THE COURT: Yes.

Q. (CONTINUING BY MR. SAUNDERS) Did he ever indicate to you whether he was a licensed contractor or not/

A. No.

Q. Do you have any idea if he was or not?

A. No.

Q. Do you have any idea if Mr. Bennett

has ever work on other constructin projects in your community?

A. No.

Q. Is it possible that he did?

A. It's possible, yes.

MR. SAUNDERS: I have no other questions, Your Honor.

REDIRECT EXAMINATION

BY MR. BENNETT:

Q. Mr. Waid, do you have the file on the Faulkner case with you?

A. No.

Q. Are you familiar with the file on the Faulkner case?

A. Not too much. I think I have it in my office an application signed by one of the Faulkners to put an addition on their, I assume, their residence on Westcott Crescent Court.

Q. Could you explain to the Court in detail what you know of this proposed addition?

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A. Like I said earlier, I don't know very much about it.

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I know there's an application made in the Faulkners' name to put an addition on.

Q. Did Mr. Floyd Mead contact you in reference to stopping work at the Faulkners' addition?

A. I don't recall that.

Q. And this is the only facts upon which you're acquainted with at this time regarding this case?

A. My knowledge about this case is very limited.

MR. BENNETT: I have no further questions.

MR. SAUNDERS: I have no questions.

THE COURT: All right. Any members of the jury panel have a question for this witness? All right. You may step down. You're excused. Thank you.

THE WITNESS: Excused for the day?

THE COURT: You're excused from this case. I don't know what the rest of the day holds for you.

Any other witnesses?

MR. BENNETT: Yes, I'd [like] to call Mr. Ernie Shinavard to the stand, please?

THE COURT: Do you want to step forward, sir, and raise your right hand to take an

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oath?

E R N E S T S H I N A V A R D

after having been first duly sworn by the Clerk of the Court at 3:40 p.m., was examined and testified on his oath as follows;

DIRECT EXAMINATION

BY MR. BENNETT:

Q. Would you please state your full name for the Court?

A. Ernest John Shinavard.

Q. And who are you employed by?

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A. Oakland County Road Commission.

Q. And how long have you been employed at the Oakland County Road Commission?

A. Since 1967.

Q. How long have you known the Defendant now before this Court, Douglas Bennett?

A. A little over ten years.

Q. How did you get to know the Defendant?

A. He installed curbs on a number of projects that I was the project engineer for in new subdivision construction.

Q. And to the best of your knowledge, the Defendant has been doing this from then until the present date, correct?

A. From late in the construction season of 1978 through . . .

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[Mr. Bennett] . . . certain specification set forth.

THE COURT: That's a legal issue. Do you want to ask him a question concerning the facts of this case?

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Q. (CONTINUING BY MR. BENNETT) The only regulation in the installation of concrete curbing is that which is set forth by the State, correct the guidelines?

A. The Oakland County Road Commission has various standards and specifications. We also utilize MDOT standards and specifications, Michigan Department of Transportation.

Q. Has the Defendant successfully followed these guidelines?

A. The curbing that has been installed on the projects I have jurisdiction over has met the minimum requirements of the Oakland County Road Commission.

Q. You speak of this minimum requirement, I'm going to rephrase this. Are you allowed to state any further than the minimum requirements when asked for a reference?

A. We do not give references for contractors.

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Q. So what you would say is if anyone else had called for a reference, you would state the same that it meets the minimum requirements?

A. That's correct. I would state that the work that had

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been done for the Road Commission appeared to meet the minimum requirements of the Road Commission.

Q. Through the busy season, weather permitting, there have been several occasions where the Defendant has proceeded from seven o'clock till ten thirty at night; is this true?

A. I really couldn't say. I'm not on the job all the time. Normally, our inspectors are out there during the actual installation of the curb.

Q. Could you briefly tell the Court what preparation is needed for the installation of this curbing, ground conditions?

A. The ground has to be properly prepared on an acceptable subgrade, forms have to be set, and the reinforcement steel has to be properly placed between the forms. The ground has to be compacted and the curb concrete has to be placed between the forms and properly finished off to the contour that is required.

Q. The normal season is from when to when?

A. Normally, construction season will begin somewhere around April and will extend normally into November.

MR. BENNETT: I have no further questions.

MR. SAUNDERS: Just briefly, Mr.

Shinavard.

CROSS - EXAMINATION

BY MR. SAUNDERS:

Q. You don't know what Mr. Bennett was doing other than these projects for you, do you?

A. No, sir.

Q. You don't know what other side projects he might have been involved with?

A. No, sir.

Q. Or any other contracts he might have made with anybody else, do you?

A. No, sir.

MR. SAUNDERS: I have no further questions, Your Honor.

MR. BENNETT: I have no further questions.

THE COURT: Any questions by any members of the jury for this witness? All right. You may step down. Thank you very much. And you're excused from the subpoena.

Call your next witness.

MR. BENNETT: I have no further witnesses at this time, but I wish to make a statement before the Court without the jury present, if I may...

APPENDIX E

The statement made by Mr. Waid in his appeals brief states: "The initial complaint further asserts that shortly after the work on the addition was commenced, appellee City of Farmington Hills and its employee, appellee Waid, found out that appellant was not a licensed contractor. That the City of Farmington Hills disallowed any additional work on the project by the appellant and that appellees City of Farmington Hills and Waid advised Appellees Faulkner that Appellant was an unlicensed contractor and to not allow Appellant to continue any work on the addition."

The quote was taken from the appeals brief of the Appellees City of Farmington Hills and John T. Waid, joined with this exhibit are the signatures of the attorneys of record for the City of Farmington Hills and John Waid. Joined is the sworn statement that a true copy was mailed to the parties in the above entitled action.